IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DENNIS ALEXANDER,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 6:16-CV-01276-RWS-JDL
	§	
v.	§	
	§	
TROUP INDEPENDENT SCHOOL	§	
DISTRICT, ANDY GRIFFIN, MELISSA	§	
YOUNG, ROBBIE SWITZER, SHANE	§	
JASPER, JOHN WHITSELL, GENE	§	
WHITSELL, STUART BIRD,	§	
Defendants.		

ORDER

Plaintiff filed a motion to compel the telephone records of Colton Whitsell c/o John Whitsell. (Doc. No. 34.) Defendant responded (Doc. No. 35) and Plaintiff replied. (Doc. No. 37.)

Plaintiff argues that Defendant represented the telephone records would be available and yet have not received a copy to date, and therefore Defendant should be compelled to produce. (Doc. No. 34.) Defendant's position is that Defendant does not have access to these documents despite Defendant's efforts. (Doc. No. 35.) Defendant indicated to Plaintiff that it would try to procure the documents again during parties' conference. (Doc. No. 37.) Having considered the parties' assertions, the Court finds that Defendant does not currently have access to the subject telephone records despite efforts to procure them. Accordingly, it is improper at this time to compel production. Fed. R. Civ. P. 16(b)(1) (parties' relative access to information is a factor to consider when determining the scope of discovery).

Furthermore, Plaintiff fails to provide a legally sufficient basis for ordering production. Fed. R. Civ. P. 16(b)(1) (discovery may be obtained that is relevant to a claim or defense and proportional to the needs of the case). The records at issue do not appear to bear on any material issues in dispute. Plaintiff argues the documents may show issues with credibility, (Doc. No. 37) but assessing documents for potential credibility issues is too speculative to order production under Federal Rule of Civil Procedure 37 at this time. Therefore, Plaintiff's motion is **DENIED**.

So ORDERED and SIGNED this 19th day of September, 2017.

JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE